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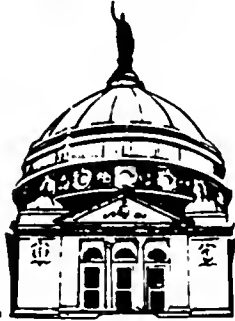
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# **THE INTERIM**

**The Monthly Report  
of Legislative  
Activity**



A Publication of



**Montana Legislative Council**

**JULY 1993**

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## **LEGISLATIVE COUNCIL**

Council Assigns Interim Studies...At its June 15 conference call meeting, the Legislative Council assigned 3 interim studies to separate committees. HJR 33 -- assessing 24-hour coverage as an alternative to workers' compensation -- was the highest ranked study in the poll and was assigned to a separate committee. SJR 31 -- examining problems with liability insurance and options for tort reform -- had received the third highest ranking in the poll and was also assigned to a separate committee. HJR 27 -- considering the health care needs of and health care services provided to Montana veterans -- was ranked fourth and was assigned to a third separate committee.

Special Committee Formed...The HB 667 study of nonlevy revenue and other outstanding school finance questions was assigned to a hybrid committee of four members of the Revenue Oversight Committee, four members of the Legislative Finance Committee, and two members of the Legislative Council. Funding for this study was provided separately in HB 667.

Study Assigned to New Retirement Committee...HJR 17, which was ranked fifth in the interim study poll, was assigned to the HB 65 Committee on Retirement Issues. HJR 17 requested a narrowly focused study on the inclusion of public safety occupations in the public

PLEASE RETURN

employees retirement system. HB 65 contained a small general fund appropriation (\$7,200) for the Committee on Retirement Issues.

Council to Handle Two Studies... SJR 15 (administration of Montana human rights laws) and HJR 13 (campaign misrepresentation) were ranked sixth and seventh, respectively, in the poll. Due to continuing funding reductions within the interim studies budget, separate committees were not an option. However, the Legislative Council has asked the Council staff to conduct research and to prepare for distribution any findings and conclusions about the two issues. If involvement by legislators is advised, the Legislative Council itself will provide the forum.

Interim Committees to be Appointed... The next step in the interim studies process is for the Senate Committee on Committees and the Speaker of the House of Representatives to appoint members to the respective committees. Subsequent to the appointment of legislators, organizational meetings will be called by the senior senator on each committee.

Council to Meet in July... A variety of other issues were also discussed by the Council, but most decisions were either left to Chairman Del Gage or deferred to the next meeting. The Council tentatively scheduled its next meeting for July 19 in Helena.

For more information, call Dave Bohyer or Bob Person at the Legislative Council, 444-3064.

## LEGAL DIVISION

### Ballot Measures Received:

- referendum on Senate Bill No. 168

Pursuant to 13-27-202(2), MCA, copies of correspondence relating to all ballot measures are available through the Secretary of State.

## LEGISLATIVE FINANCE COMMITTEE

Committee Meets in June... The Legislative Finance Committee met in Helena on June 25 to discuss a number of staff reports and elect new officers.

Committee Hears Appropriations Report...LFA staff presented the two-volume *Appropriations Report, 1995 Biennium* to the Committee. Committee members extensively discussed the information in the Summary (gray section) in Volume I and noted that other legislators and members of the public will find it useful as a reference source on the state budget.

Copies of the report have been mailed to all legislators and state agencies. A limited number of copies are still available in the LFA office.

Staff Provides Revenue Collection Update...Through June 23, 93.5 percent of the fiscal 1993 revenue estimate contained in HJR 3 had been received. If individual income tax and statewide property taxes come in as estimated, total general fund and SEA revenue estimates for fiscal 1993 will be achieved.

Processing delays make final determination of income tax collections difficult. While approximately \$16 million of estimated income tax payments were due by June 15, the Department of Revenue (DOR) has a backlog and does not anticipate the checks will be deposited until the end of June. DOR will not complete processing income tax returns until late July. Although the cash for these refunds will not leave the state treasury until fiscal 1994, they will be recorded on the state accounting system as fiscal 1993 activity.

Legislation passed during the July 1992 special session requires county treasurers to remit the revenue from the 95 mill school equalization levy received by June 15 to the state treasurer by June 25, to help year-end cashflow. As of June 23, not all counties had remitted these funds. Statewide property taxes account for 57 percent of total SEA revenues.

The Office of Budget and Program Planning (OBPP) is projecting \$15.5 million higher general fund and SEA revenues during fiscal 1993-95 than adopted by the Legislature in HJR 3. Most of the increase is due to higher taxable values resulting from property tax reappraisal. Because DOR had not yet completed its reappraisal work, this information was not available to the Legislature when it adopted final revenue estimates in HJR 3.

OBPP also projects higher revenue from the rail car tax. Proceeds from this tax are currently being paid under protest pending outcome of litigation concerning the tax. OBPP's projections contain \$12.2 million of revenue from this source, as it anticipates receipt of two years' payments in fiscal 1993. HJR 3 revenue estimates contain \$9.5 million from this source for the 3-year period.

DOR Issues Opinion on Federal Retirement Tax Decision...The Governor's legal staff announced that the Department of Revenue has concluded that Montana is not legally required to issue refunds to federal retirees that paid Montana income taxes on their federal retirement income

prior to 1989. Based on language in the recent U.S. Supreme Court case, the Department concluded that "it is clear that Montana does provide relief consistent with due process principles without issuing refunds...As a result Montana will not be required to issue refunds. If the federal retirees do not agree with Montana's position, the courts will have to resolve the issue." However, subsequent to the Committee meeting, the Governor's Office announced it may still consider making some form of refunds to federal retirees.

Legal Counsel Discusses Potential Suspension of HB 671...Legislative Council legal staff presented information to the Committee on legal questions surrounding the potential suspension of House Bill 671. LFA staff presented information on the fiscal impacts of the potential suspension. (For a more complete review of this discussion, please see the report from the Revenue Oversight Committee, beginning on page 8.)

Committee Elects Officers...The Committee selected new officers for the 1995 biennium: Representative Tom Nelson, chair; Senator Cecil Weeding, vice-chair; and Representative Ed Grady, secretary.

To Meet in September...The Committee's next meeting will be in September.

## STATE HOUSING TASK FORCE

Task Force to Study Housing Needs...House Bill No. 581, passed by the 53rd Legislature and signed by the Governor, created a housing task force to study the availability of housing within Montana for persons in middle-income and lower-income groups. In addition to housing availability, the task force is charged with studying methods and mechanisms for providing housing assistance, including mechanisms currently available in Montana and methods available in other states. The Legislative Council will provide staff assistance to the task force.

Governor to Appoint Task Force...The task force consists of 16 members to be appointed by the Governor. In addition to two legislators, the task force membership must include representatives of housing authorities, cities and counties, realtors, financial institutions, landlords, home builders, low income groups, the physically disabled, human resource development councils, neighborhood housing services, housing and redevelopment officials, and the Governor's office.

The Governor must appoint the task force by November 1, 1993. A complete list of housing task force members will be published in a future issue of *The Interim*.

## COMMITTEE ON INDIAN AFFAIRS

Committee Membership Expanded...With the passage of House Bill No. 693, the membership of the Committee on Indian Affairs has been expanded from four members to eight members. The four new members consist of two senators and two representatives, equally divided between Democrats and Republicans. As some of the new members have not yet been appointed, a complete list of members will be published in a future issue of *The Interim*.

Committee Has Statutory Responsibilities...The 53rd Legislature did not assign any specific studies to the Committee this interim. However, the Committee has numerous statutory responsibilities to fulfill. These responsibilities include:

- seeking opinions of and information from Indian tribes, Indian tribal organizations, state agencies, local governments, non-Indians living on or near Indian reservations, and other interested persons and agencies in order to gain insight into Indian/non-Indian relations;
- holding hearings both on and off reservations to promote better understanding between tribes and public agencies and to improve both the Indian people's knowledge of the structure of state agencies and the legislative process and the non-Indian people's knowledge of tribal government and institutions;
- encouraging and fostering participation of Indian people at its meetings;
- acting as a liaison between the Indian people and the Legislature; and
- encouraging tribal-state and tribal-local government cooperation and otherwise promoting amicable Indian/non-Indian relations.

## LEGISLATIVE AUDIT COMMITTEE

Committee Holds June Meeting...The Legislative Audit Committee met June 18 in Room 104 of the State Capitol. The following reports were presented:

## FINANCIAL-COMPLIANCE AUDITS:

Department of Health and Environmental Sciences, 92-11

A financial-compliance audit of the Department of Health and Environmental Sciences was performed for the two fiscal years ending June 30, 1992. An unqualified opinion was issued on the financial schedules presented in the report. The report contains twelve recommendations. The recommendations pertain to improving compliance with federal regulations, accurate recording of financial activity on the state's accounting records, and improving controls over the Women, Infants, and Children (WIC) applications.

Department of Revenue, 92-6

The financial-compliance audit of the Department of Revenue for the two fiscal years ending June 30, 1992, contains a qualified opinion on the financial schedules. The report contains twenty recommendations addressing:

- the coal severance tax;
- accounting measurement issues;
- internal controls;
- appropriations;
- state and federal compliance; and
- the corporation license tax for financial institutions.

Department of Labor and Industry, 92-5

A financial-compliance audit of the Department of Labor and Industry, covering the two fiscal years ending June 30, 1993, was completed. The report contains 13 audit recommendations. Major issues addressed in the report include: unallowable costs charged to federal programs for Job Service offices, compliance with federal regulations related to the Emergency Unemployment Compensation Act, compliance with state accounting laws and policy, and computer access controls.

Teachers' Retirement Division, Department of Administration, 92-16

A financial-compliance audit of the Teachers' Retirement Division was performed. The audit was for the two fiscal years ending June 30, 1992. This report contains no recommendation to the division; an unqualified opinion on the division's financial schedules was issued.

Public Employees' Retirement Division, Department of Administration, 92-15

A financial-compliance audit of the Public Employees' Retirement Division was completed for the two fiscal years ending June 30, 1992. The audit report contains five recommendations to improve the division's operations. These recommendations include retirement payments to deceased retirees and overpayment of disability retirement

payments. The report also contains an unqualified opinion on the Public Employees' Retirement Division's financial schedules. -

## ELECTRONIC DATA PROCESSING (EDP) AUDIT

### The Economic Assistance Management System (TEAMS), Department of Social and Rehabilitation Services, 93DP-31

An EDP audit of the general and application controls over The Economic Assistance Management System (TEAMS) was performed. Operated by the Department of Social and Rehabilitation Services, TEAMS is the State of Montana's largest on-line computer system. TEAMS determines client eligibility and calculates allowable benefits for the AFDC, Food Stamp, and Medicaid programs. The overall finding was that TEAMS determines eligibility and calculates program benefits properly in accordance with state and federal regulations.

Some general control issues concerning access were identified. These issues include programmer access to production programs and data, inappropriate user access abilities, noncompliance with 2-15-114, MCA, concerning internal evaluations of security, and need for independent review of daily access reports.

Some application control issues concerning input were also identified. The recommendations address proper use of verification codes, creating additional system edits to prevent improper benefit awards, system interfaces, and management authorization of programming changes.

## PERFORMANCE AUDITS

### Juvenile Justice in Montana, Department of Family Services, 92P-28

This was a performance audit of how juvenile justice in Montana operates. Currently, Montana has a juvenile justice structure composed of interrelated, but independent, entities: youth courts, correctional facilities, parole offices, and various administrative entities. Due to lack of formalized, overall administrative oversight, the entities have evolved or developed with little regard for the needs of the system as a whole. Subsequently, while each entity must, in one way or another, rely on the other entities, there is no mechanism for assuring consistency, or clear and coordinated actions. The deficiencies noted throughout this report have adversely affected the entire structure.

The audit findings suggest a need for comprehensive management controls and management information throughout the juvenile justice

structure. Areas were identified for improving youth court operations, DFS management over corrections-related activities, and management information on juvenile justice operations. Specific recommendations are directed toward increasing system control by formalizing procedures among individual components. Standardizing probation officer training curriculum, establishing measurable treatment goals and objectives at correctional facilities, and developing operational procedures for parole officers are all actions that will improve system control.

Motor Vehicle Recycling and Disposal Program, Department of Health and Environmental Sciences, 93SP-23

This report was a follow-up review of a performance audit of the Montana Motor Vehicle Recycling and Disposal Act of the Department of Health and Environmental Sciences, referred to as the Junk Vehicle Program. Objectives of the follow-up were to determine implementation of the original audit recommendations, including providing updated information on program revenues, expenditures, and fund balance. The review determined the Junk Vehicle Program has fully implemented 8 recommendations, partially implemented 3, and has not yet implemented 4 of the 15 original recommendations. The report emphasized the need for the program to complete full implementation of the recommendations, specifically timely enforcement of county motor vehicle graveyards and compliance of wrecking facilities with applicable statutes and rules.

## REVENUE OVERSIGHT COMMITTEE

Implications of HB 671 Referendum Discussed...House Bill No. 671 (HB 671), enacted during the last regular session of the Legislature, significantly revised the individual income tax and corporation license tax structures. The bill was designed to raise additional revenue in the event the voters rejected the Governor's tax reform package. The passage of HB 671 prompted Rob Natelson, a University of Montana law professor, to initiate a petition to have HB 671 referred to the voters at the November 8, 1994, general election. If enough signatures are obtained, HB 671 would be suspended until the election.

Greg Petesch, Director of Legal Services, Legislative Council, informed the Revenue Oversight Committee at its June 14 meeting of the possible consequences of the referendum. Petesch concluded that:

- If HB 671 is suspended, the provisions of law in effect prior to the effective date of HB 671 would return to effect.



- If HB 671 is suspended but approved by the voters, its provisions would be effective and apply to tax years 1993 and 1994. However, 1993 tax returns would have been filed at erroneous rates because the provisions of law that were in effect prior to the effective date of HB 671 were in effect during the term of suspension.
- If HB 671 is suspended and the bill is rejected, a serious budget deficit will result because the 1995 biennium budget was based on anticipated revenue under HB 671.
- If HB 671 is referred but not suspended, it remains in effect until the election. If it is rejected, it will be as if HB 671 was never in effect. Tax returns for 1993 would have been filed at an erroneous rate.
- If HB 671 is referred but not suspended and is approved by the voters, the bill would remain in effect.

Petesich noted that there would be significant administrative problems in dealing with tax returns filed at erroneous rates.

Teresa Olcott Cohea, Legislative Fiscal Analyst, described some of the fiscal implications of the referendum. She said that HB 671 is estimated to raise \$72.7 million for the biennium. If HB 671 is rejected, the projected general fund balance at the end of the biennium would be a negative \$48.1 million and the projected cash balance would be a negative \$89.7 million. The suspension of HB 671 would limit the state's ability to sell tax and revenue anticipation notes.

Cohea also described the magnitude of the budget cuts required to generate \$72.7 million in savings. She said that if education and human services were not part of the budget reductions, the general fund appropriations to 35 agencies and other general fund expenditures would have to be eliminated effective January 1, 1994. If the governor exercised his authority to require state agencies to reduce their spending, budget reductions of 8.4% of eligible general fund expenditures in FY94 and FY95 would be needed. Review and comment procedures, entitlement provisions, and the lack of legislative involvement severely limit this option. Using HB 2 as the base, budget reductions of 26% for the period Jan. 1, 1994, through June 30, 1995 would be needed to achieve the \$72.7 million in savings. Other options would include large reductions in the University system or the school equalization program during the same period.

Impact of Property Reappraisal Reported...Mick Robinson, Director, Department of Revenue, presented information, by county, on the estimated change in taxable value as a result of the reappraisal of residential and commercial real property. The largest increases in taxable

value occurred in Lake County (18%), Flathead County (11.3%), Silver Bow County (7.1%), and Gallatin County (6.9%). The largest decreases in taxable value occurred in Dawson County (-4.6%), Musselshell County (-4.5%), Liberty County (-4.3%), and Daniels County (-4.1%). These figures do not necessarily reflect the magnitude of the changes that occurred in the taxable value of individual pieces of residential or commercial property.

Study Plans Adopted...The 53rd Legislature assigned two interim studies to the Committee, and the Committee considered staff study plans for the two studies:

(1) HJR 30 directs the Committee to study tax expenditures as they relate to the budgeting process. Tax expenditures are the use of public resources for public purposes and are allocated through the tax system rather than by direct expenditure. Elements of the study plan include a review and evaluation of tax expenditure items in Montana, a comparison of tax expenditure budgeting and reporting in other states, and the development of options for a formal legislative review process of tax expenditures.

(2) SJR 33 directs the Committee to study special improvement district and rural special improvement district financing. A district court decision concluded that Carbon County was not required to provide loans from a revolving fund to two insolvent rural special improvement districts. Senate Bill No. 426 (SB 426) was introduced to ensure the viability of revolving funds. However, the Legislature was unable to settle the matter and the bill died in the House of Representatives. Senate Joint Resolution 33 was introduced to examine the complex issues raised by the court decision and by SB 426. The study will review the historical development of special improvement districts, evaluate the impact of the court decision on special improvement district financing, and consider alternative methods for special improvement district financing.

The Committee adopted, with some revisions, both study plans.

Other Topics...Other committee business included a report on the establishment of liquor agency store franchise agreements, a review of coal tax oversight duties, a summary of proposed DOR rules dealing with the confidentiality of taxpayer information, and a report on a lawsuit filed by railroad car companies challenging the new method of taxing railroad cars. A decision in favor of the railroad car companies could mean a revenue loss to the state of more than \$3 million per year.

Sept. 17 Meeting Date...The next Revenue Oversight meeting is scheduled for Sept. 17 at 9:30 a.m. in Room 104 of the Capitol.

## ENVIRONMENTAL QUALITY COUNCIL

Hazardous Waste Study...At its June 2 meeting, the Environmental Quality Council decided to give priority to a study of the management and disposal of hazardous waste, as requested by the 1993 Legislature. SJR 34 asks the EQC to study the following: hazardous waste reduction and recycling strategies; the feasibility of both public and private hazardous waste disposal options; the need for siting criteria for hazardous waste management facilities; the status of Montana's position within the regional hazardous waste capacity assurance plan; the relationship between federal and state authority over various hazardous waste management issues, including the regulation of the transportation of hazardous waste; and the adequacy of the current regulatory framework for the management and disposal of hazardous waste in Montana.

The Legislature also recommended that, in the process of conducting the study, the EQC consult with federal, state, and local officials, industries, citizens, and other persons or groups with expertise or interest in hazardous waste management. The Council is required to report its findings and recommendations to the 54th Legislature.

To assist the Council in narrowing the scope and focus of the hazardous waste study, the EQC is establishing a working-group composed of six Council members (Senator Rye, Mr. Jerry Noble, and Representatives Bird, Cocchiarella, Knox and Orr) and representatives of the various parties involved in and affected by the management and disposal of hazardous waste. The working group will be holding meetings and conducting public hearings through the summer as it develops a recommendation to the EQC for the focus and scope of the study. Anyone wishing additional information on the study or study process should contact the EQC staff.

Nondegradation Study...The Council also decided to undertake the nondegradation study as requested by the 1993 Legislature through SJR 29. Specifically, the Council decided to address the following issues: the social and economic development factors and the public interest in maintaining high-quality waters; the appropriateness of the application of non-degradation provisions to all sources of pollution; the relationship between the nondegradation statutes and the Montana Constitution; and the potential utilization of mitigation measures to improve overall water quality. The Council also decided to closely monitor the Board of Health and Environmental Sciences (BHES) rulemaking process regarding this issue.

The EQC has appointed six Council members to a nondegradation subcommittee. This subcommittee is further divided into two groups, one holding a July meeting in Eastern Montana and the other holding a July meeting in Western Montana. Subcommittee members are Senators Grosfield and Doherty (Chairs) and public members Glenn Marx, Greg Tollefson, Jeanne-Marie Souvigney, and Bob Boeh.

Finally, the EQC accepted an offer from the Water Policy Committee to participate in the nondegradation study. The Committee will appoint four members to the EQC subcommittee. The subcommittee is tentatively planning on holding meetings around the state this summer to better focus the issues. It is expected that the subcommittee will report its findings to the full EQC at the next EQC meeting.

Next Meeting...The next Council meeting is tentatively scheduled for September 10, 1993. Agenda items will include finalizing the interim work plan and a continued discussion of the nondegradation and hazardous waste issues.

For more information on these issues, a copy of the interim work plan, or to be placed on the Council's mailing list, please contact the EQC staff at 444-3742.

## WATER POLICY COMMITTEE

Interim Work Plan Finalized...The Water Policy Committee, meeting June 28, 1993, concentrated on finalizing issues for interim study. The Committee focused on the "late claims" study, water quality nondegradation, and instream flow.

"Late Claims" Study...The "late claims" study, mandated by SB 310, will look at the potential for and impacts of additional water rights forfeiture remissions for late water right filers. Understanding the importance of public comment on this issue, the Committee will schedule at least two public meetings - one in eastern and one in western Montana. The first public meeting is tentatively scheduled for September 13, 1993, in Missoula. The Committee decided that to better frame the issues, it would first identify all possible options for additional forfeiture remissions. The Committee has asked interested persons to identify options and forward them to Committee staff. The staff will compile the options into a report for discussion at the September meeting in Missoula.

Water Quality Nondegradation...The Committee's offer to assist the EQC in its water quality nondegradation study was accepted by the EQC at its June meeting. The Committee will appoint four members to the six-member EQC nondegradation subcommittee. The subcommittee is tentatively planning on holding meetings around the state this summer to better focus the issues. It is expected that the subcommittee will report its findings to the full EQC at the next EQC meeting in September.

Instream Flow...The Committee decided to undertake an instream flow study during this interim. The goal of this study is to gather information and to educate the Committee and the broader public on instream flow issues. The Committee is holding open the option of recommending an instream flow policy to the 1995 Legislature should the Committee members reach consensus on this controversial topic.

Meeting on September 13...The next Committee meeting is tentatively scheduled for Monday, September 13 in Missoula. The exact location and meeting times will be decided next month. Agenda items include continued discussion of the instream flow and nondegradation issues, a public meeting on the late claims study, and an update by the Upper Clark Fork Steering Committee.

For more information on these issues, a copy of the interim work plan, or to be placed on the Committee's mailing list, please contact the EQC staff at 444-3742.



## INTERIM CALENDAR

July 5, Independence Day observed, holiday

July 19, Legislative Council

September 6, Labor Day, holiday

September 10, Environmental Quality Council

September 13, Water Policy Committee, Missoula

September 17, Revenue Oversight Committee, Room 104,  
9:30 a.m.

October 11, Columbus Day observed, holiday

November 11, Veterans' Day, holiday

November 25, Thanksgiving Day, holiday

December 24, Christmas Eve, holiday

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